IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 25TH OCTOBER 2007 / 3RD KARTHIKA 1929

WP(C).No. 24307 of 2007(R)

OS.710/1999 of I ADDL.SUB COURT,ERNAKULAM
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PETITIONER:

SHRI K.P.STANLY, AGED 53, S/O PAPPU,
KOLAPPILLIL HOUSE, HOUSE NO.43/1438,POWER HOUSE,
EXTENSION ROAD, ERNAKULAM NORTH,
THRIKKANARVATTOM VILLAGE, KANAYANNUR TALUK,
NOW RESIDING AT KOLLAMPARAMBIL HOUSE,
KARUKAPPALLY JUNCTION,ELAMAKKARA, KOCHI- 682 026.

BY ADV. SRI.VARGHESE C.KURIAKOSE
SRI.PRAVEEN K. JOY
SMT.THANKOM.G
SRI.E.M.MURUGAN

RESPONDENT:

SHRI K.P.JOSEPH, AGED 48,
S/O PAPPU, KOLAPPILLIL HOUSE, HOUSE NO.43/1436,
POWER HOUSE, EXTENSION ROAD, ERNAKULAM NORTH,
THRIKKANAVATOOM VILLAGE, KANAYANNUR TALUK.

BY ADV. SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.24307/2007 R

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE JUDGMENT IN WP(C() NO.18953/2004 PASSED BY THIS HONOURABLE COURT.**

EXT.P2: **COPY OF THE COUNTER AFFIDAVIT FILED IN THE APPLICATION FOR EXAMINATION OF THE WITNESS ON COMMISSION.**

/TRUE COPY/

P.A.TO JUDGE

KSS

M.N. KRISHNAN, J.

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W.P.C. NO. 24307 OF 2007

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Dated this the 25th day of October, 2007.

J U D G M E N T

This writ petition is filed to direct the I Addl. Sub Judge, Ernakulam to permit the petitioner to examine Elizabeth Camilo and also the document writer Sri.K.M.Sadasivan based on Ext.P1 order. The plaintiff is the writ petitioner before me and the suit is filed for realisation of rupees more than 5 lakhs which according to the plaintiff is evidenced by a cheque. It is averred in the plaint itself that the defendant has told him that the cheque is in the handwriting of the wife. I am also informed that the wife of the defendant figured as a witness for the plaintiff's witness list much prior to the start of the trial of the case. It is true that after the closure of evidence large number of applications were filed for reopening etc. which ended in dismissal and this Court by virtue of Ext.P1 judgment granted an opportunity to the plaintiff to adduce further evidence. I am also informed that summons was taken out to the wife of the defendant and at

the first instance it was returned as residence locked and on a subsequent occasion that she had gone to Coimbatore. The learned counsel for the respondent would submit that the wife of the defendant is staying at Coimbatore now. It is also submitted that a Commission was issued to examine her from Coimbatore but did not fructify on account of a Hartal. Whatever it may be much water has flown and much can be stated about the attitude of both the parties. But the Court is concerned with the question whether permission is to be granted to examine the witnesses cited. I feel that as there is an averment in the plaint wherein there is a reference to the wife of the defendant and as the plaintiff had submitted his witness list including her as a witness, it is not a belated thought that had entered into his mind so as to unnecessarily harass a person. If it is the handwriting of the defendant's wife in the cheque it may be one of the circumstances that may have a great bearing in the result of the suit. Therefore, I feel she is a necessary witness who has to be examined for proper disposal of the case. She is now

residing at Coimbatore and they have got a house at Ernakulam. I direct that she can come to Ernakulam and get her examined as a witness by a Commissioner at her residence at Ernakulam. I fix the date of examination on 12.11.07 at 3.00 p.m. I hope and trust that there will be absolute co-operation and further complication may not arise on the basis of this. I also permit the writ petitioner to examine Sadasivan in Court and thereafter the Court below shall proceed to dispose of the matter in accordance with law as early as possible. Needless to say that the expenses for the examination by the Commissioner has to be met by the writ petitioner.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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